IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.Rev.Pet.No. 798 of 2005()

CC.355/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONER: COMPLAINANT

JOHN, AGED 65 YEARS, DRIVER,
S/O.THOMAS, MATTAMMELCHIRAYIL,
KOCHUPALLY ROAD, THOPPUMPADY, RAMESWARAM VILLAGE,
KOCHI TALUK.

BY ADV. SRI.T.K.PANKAJASHAN PILLAI
SRI.A.P.UNNIKRISHNAN
SRI.SAJI PANKAJAKSHAN

RESPONDENTS: ACCUSED

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1. K.V.BABU, S/O.VELAPPAN,
"A" CATEGORY LEADER, NUMBER 661,
DY. TRAFFIC MANAGER(P), KOCHIN,
PORT TRUST, KOCHI-3.

2. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KERALA.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.ASHIK K.MOHAMMED ALI
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO. 798 of 2005

Dated this the 10th day of January, 2007

O R D E R

This revision petition is filed against an order of dismissal of the complaint under Section 204(4) of Code of Criminal Procedure ('the Code', for short).

2. The revision petitioner filed a complaint alleging offence under Section 138 of the Negotiable Instruments Act. The case was taken on file on 21.2.2004 and summons was ordered against the accused by registered post and it was posted to 3.8.2004 for payment of process fee. On 3.8.2004, the complainant was absent and no cover was produced. The case was kept aside and a direction was given to pay postage on the said day itself. It is recorded in the proceeding sheet that when the case was called after some time, there was no representation for the complainant. Hence the complaint was dismissed under Section 204(4) of the Code.

3. Learned counsel for the revision petitioner submitted that complainant had made arrangements to pay the process fee and entrusted the same with the clerk, Sri.Sukumaran attached to the office of the counsel appearing for the revision petitioner, but because of his laches, the process fee happened to be not paid. According to learned counsel for the revision petitioner, the clerk expired on 26.8.2004. In such

circumstances, a request is made that one more opportunity may be given to the complainant to take steps. It is also clear from the proceeding sheet itself that though the complainant was absent, there was some representation on his behalf, atleast when the case was called for the first time. It is submitted that the case happened to be dismissed due to unexpected reasons and not due to the fault of the complainant.

4. On considering the facts and circumstances of the case, I find that this is a fit case where the complainant has to be given one more opportunity to pay the process fee. Though the complainant had a reasonable time from 21.2.2004 till 3.8.2004 to take steps and though strictly speaking, to that extent the order under challenge cannot be said to be illegal, taking into consideration the submissions made by learned counsel for the revision petitioner, which facts were not brought to the notice of the court in time, especially in the absence of the complainant, I find that the order under challenge has to be set aside in the interest of justice. The propriety demands that the order is interfered with, for giving an opportunity to the complainant to prosecute the complaint.

5. Hence the order under challenge is set aside. The lower court is directed to take the case on file and proceed in accordance with law. Since there is appearance for the respondent accused in this revision petitioner, both parties are directed to appear before the trial court on 26.2.2007.

This revision petition is allowed.

K.HEMA, JUDGE

vgs.